



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 7, 1998

Ms. Kristi A. Taylor
Assistant City Attorney
Neiman & Barnes, L.L.P.
386 W. Main
Lewisville, Texas 75067

OR98-2956

Dear Ms. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120171.

The City of Lewisville Police Department (the "police department") received a request for 1) an original complaint "used to substantiate probable cause for the issuance of arrest warrant," 2) information relating to the investigation of a missing person report "as connected to this case," and 3) a particular witness statement. The requestor indicated that the case in relation to which she seeks the information is a prosecution for "Aggravated Sexual Assault of a Child," which resulted in a conviction. You submit as responsive to the request three offense/incident reports with attached investigative materials. You seek to withhold the requested information under sections 552.101 and 552.108 of the Government Code.

Section 552.101 requires withholding information made confidential by statute. Subsection (a) of section 261.201 of the Family Code provides:

(a)The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under . . . chapter [261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

Two of the submitted reports with attachments, numbers 96-11427 and 96-11768, are protected by section 261.201(a). You have not indicated that the police department has adopted rules relating to disclosure of these records. Therefore they must be withheld in their entirety under section 261.201(a). *But see id.* §261.201 (f) (disclosure of edited records by Department of Protective and Regulatory Services to parent or legal representative of child). Since your claim under section 552.108 of the Government Code pertained to one of the files which we have determined you must withhold under section 261.201(a) of the Family Code, we need not further address your section 552.108 claim.

The remaining information at issue, report number 96-11426, contains criminal history information which must be withheld. Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history record information ("CHRI") which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See also* Gov't Code § 411.087 (entities authorized to obtain information from DPS are authorized to obtain similar information from any other criminal justice agency; restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Other entities specified in Chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release the information except as provided by Chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the CHRI in report number 96-11426 which must be withheld.

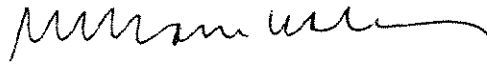
Section 552.101 of the Government Code also protects information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly

objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We have marked portions of report number 96-11426 which must be withheld under common-law privacy.

Finally we note that report number 96-11426 contains driver's license information which must be withheld under section 552.130(a)(1) of the Government Code. We have marked the portions of the report which must be withheld under section 552.130(a)(1). Except as noted above, report number 96-11426 must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 120171

Enclosures: Submitted documents

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(w/o enclosures)